IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 5177 of 2000
For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DR SONIA HURRA
Versus
REGISTRAR 3RD SPECIAL LAND ACQUISITION

Appearance: Mr.M.D. Pandya, for DR SONIA HURRA for Petitioner
Mr.D.N. Patel, Assistant GOVERNMENT PLEADER, for Respondent No. 1 & 3
Mr.S.B. Vakil, for MR HV CHHATRAPATI, for Respondent No. 2
Mr.Y.N. Oza, for respondent No.4.
Mr.A.J. Patel, for MR PRADEEP PATEL, for Respondent No. 5, 6, and 7

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/07/2000

C.A.V. JUDGEMENT: (Per P.B. Majmudar, J.)

1. One "Action Group" has filed the present petition by way of Public Interest Litigation through its Convener Mr.Dinkar Mehta. By way of this public interest litigation, the petitioner has prayed various reliefs such as, directing the Registrar of Cooperative Societies to appoint an Administrator; to take charge of the

respondent No.4-Bank; to direct the Reserve Bank of India to take appropriate proceedings under Section 35A of the Banking Regulation Act, 1934; to cancel the Board of Directors presently functioning of the respondent No.4-Bank, and to appoint Administrator for the purpose of managing the affairs of the respondent No.4-Cooperative Bank.

2. The petition was moved during vacation and the learned Vacation Judge has issued notice to the respondents.

3. The respondents have appeared in the matter and on behalf of respondents 4 to 7, respondent No.7, who is the Manager of the respondent No.4-Bank, has filed affidavit-in-reply, which is at page 131 of the paper book.

4. The say of the petitioner is that the petitioner Action Group is a registered voluntary organization and that the said Action Group is actively involved in fighting the corruption at all levels, with a noble object of uplifting the moral values and ethics of various Officers, who are managing Public Institutions, dealing with public money. According to the petitioner, the respondent No.4-Bank is declared as a "Weak Bank" by the Reserve Bank of India and that if it goes in liquidation, public will suffer losses, running into crores of rupees. The petitioner has tried to point out various so-called irregularities on the part of the respondent No.4-Bank in making advances and other irregularities in the matter concerning the financial affairs of the Bank.

5. In the affidavit-in-reply filed by the Manager of the Bank, it has been pointed out that one Priyavadan Shah, who is the President of the petitioner Action Group, is having direct or indirect personal interest in filing the present petition. It is stated in the affidavit-in-reply that Mr.Priyavadan Shah floated a Society, in the name and style of "Priyavadan Cooperative Housing Society Limited", and borrowed Rs.1,10,00,000/from the respondent No.4-Bank. Mr.Priyavadan Shah was the Director in the Bank at the relevant time and he ultimately facilitated to secure loan through one of the members of his family by making him as Chairman of the Society. It has been pointed out that the said Mr.Priyavadan Shah took undue interest as Director of the Bank in getting clearance of loan for the Society, which is formed by him, and that the Society did not pay the instalments regularly. It is also pointed

out in the reply that the Registrar of Cooperative Societies had issued notice to the Directors on 3.8.1999, including Mr.Priyavadan Shah, asking explanation as to why the Board should not be superseded. The said notice is challenged in the High Court and the petition is pending. It is the say of the respondent No.4-Bank that this Court should not exercise its discretion to entertain this Public Interest Litigation at the instance of Action Group, of which Mr.Priyavadan Shah is the President and who was the Director of the respondent No.4-Bank at the relevant time. It is also further pointed out that the Bank issued a letter dated 10.1.2000 to said Mr.Priyavadan Shah, stating that he was a defaulter. A copy of the said letter is annexed as Annexure R6 with the reply affidavit. Said Mr.Priyavadan Shah gave reply to the said notice and thereafter, the Board passed a Resolution and informed Mr.Priyavadan Shah that as per Bylaw 29.2(4) his seat as Director of the Bank stands vacated. The aforesaid Resolution is annexed as Annexure R7 with the reply. At that stage, said Mr.Priyavadan Shah challenged the order dated 9.2.2000 by filing proceedings before the Board of Nominees by way of Arbitration Suit No.151 of 2000. In the aforesaid suit, he prayed for interim injunction regarding the order of the Bank dated 9.2.2000. The Board of Nominees had rejected the application and the Tribunal also dismissed Revision Application of the said Mr.Priyavadan Shah. The order of the Board of Nominees as well as of the Tribunal are annexed as Annexure R8 and at that stage, i.e. when the Board of Nominees had already rejected the application for interim injunction and when the revision was pending before the Tribunal, this public interest litigation has been filed by the Action Group. It is also pointed out that if the present petitioner has any genuine interest, they could have moved the public interest litigation when the said Mr.Priyavadan Shah was the Director of the respondent No.4-Bank.

6. It is also pointed out that so far as Mr.Dinkar Mehta, who is stated to be the Convener of the petitioner Action Group, is concerned, he was given a loan of Rs.10,000/- in December, 1997, and he was declared defaulter because he did not pay instalments regularly. Said Mr.Mehta issued two cheques worth Rs.450/- each for the month of May, 1999 and June, 1999, but the same were not honoured on its presentation for clearance and notice under Section 138 of the Negotiable Instruments Act was served on Mr.Dinkar Mehta by the respondent No.4-Bank. It is pointed out that at the relevant time, in the year 1999, a sum of Rs.5,233/- was outstanding and at the time of institution of the present petition, a sum of

Rs.1,664.50 was outstanding. It is further stated that the said Mr.Dinkar Mehta, after the filing of the present petition and on issuance of notice by this Court, deposited Rs.1,664.50 on 27.5.2000. Relevant particulars of the aforesaid facts have been produced with the reply as Annexure R2. Under the aforesaid background, we have to consider whether this can be said to be a genuine public interest litigation at the instance of the petitioner Action Group.

7. Mr.M.D. Pandya, learned Advocate for Ms.Sonia Hurra, has pointed out that so far as the irregularity of respondent No.4-Bank is concerned, there is voluminous record to substantiate that irregularity can be said to have been committed by the respondent No.4-Bank. According to his submission, if ultimately the cause is genuine, the Court may not reject the petition simply on the ground that the credentials of the person, who has brought this petition, may not be upto the mark, and it is the cause which should be considered by the Court. Mr.Pandya pointed out that one Ashok D. Naik has filed Special Civil Application No.1436 of 1990 against respondent No.4-Bank itself, wherein necessary directions have been prayed for by the petitioner of that petition to the effect that the Reserve Bank of India should take appropriate action under Section 35-A of the Banking Regulation Act, 1934 and that necessary action should be taken by the Reserve Bank regarding the irregularities committed by the respondent No.4-Bank. It is the submission of Mr.Pandya that as back as in 1990 also, irregularities committed by the Bank has already been pointed out in the aforesaid Special Civil Application and that petition has been entertained by this Court by admitting the same and, therefore, the irregularity which is complained of in the present petition is not mere imaginative, but is a matter of substance. It is also pointed out by Mr.Pandya that the respondent No.4-Bank has also filed Special Civil Application No.6010 of 1999, wherein show cause notice issued under Section 81 of the Cooperative Societies Act was challenged and the said petition is pending before this Court. Mr.Pandya has also pointed that Special Civil Application No.8623 of 1999 has also been filed on behalf of respondent No.4-Bank, wherein also show cause notice dated 3.8.1999 issued under Section 81 of the Cooperative Societies Act has been challenged, wherein there is an interim relief of this Court that no action should be taken on the basis of the said show cause notice. It is, therefore, submitted that when the Registrar of Cooperative Societies thought it fit that there is some prima facie case, and had issued show cause notice against respondent

No.4-Bank, it cannot be said that the allegations made in the petition are without any foundation.

8. Against the aforesaid arguments, Mr.S.B.Vakil, learned Advocate for the Reserve Bank of India, has submitted that the Reserve Bank of India has been joined in the petition without any valid reason, and no cause of action has arisen against the said Bank. He argued that the petitioner has not made any demand against the Reserve Bank before approaching this Court and, therefore, writ of mandamus is not maintainable against the Reserve Bank. Mr.Vakil, however, made it clear that if with proper particulars application is made to them, then the Reserve Bank will consider the same and will not be hesitant in taking action in accordance with law.

9. Mr.Y.N. Oza, appearing for respondent No.4, has pointed out that in view of the documents submitted by the Bank, it is clear that there is no genuine public interest and the aforeaid Convener Mr.Dinkar Mehta is subjected to notice under Section 138 of the Negotiable Instruments Act as well as Mr.Priyavadan Shah, President of the Action Group, was already subjected to removal while he was occupying the post of Director of the Bank and, therefore, in order to settle their private grievances, they have filed the present petition through Action Group and that the petition, therefore, should not be entertained by this Court at the instance of the aforesaid Action Group.

10. Mr.A.J. Patel, learned Advocate appearing for some of the contesting respondents, submitted that this is not a bona fide and genuine public interest litigation and moment Mr.Priyavadan Shah failed to get interim orders, this petition has been filed. He further pointed out that the Bank has not committed any financial irregularity and that there is no substance in the allegation made in the petition in this behalf. He pointed out that if there was genuine public cause, the petitioner would have approached the Court earlier in point of time, especially when Mr.Priyavadan Shah was the Director of the respondent No.4-Bank.

11. We have heard the arguments of both the sides, in detail, and we have also perused the petition, affidavit-in-reply and all other documents annexed with the petition and the reply.

12. The first question which requires consideration is whether this public interest litigation should be entertained at the instance of "Action Group", whose

Convener Mr.Dinkar Mehta, is subjected to proceedings under Section 138 of the Negotiable Instruments Act. There is some dispute going on between him and the respondent No.4-Bank. Similarly, so far as the President of the aforeaid "Action Group" is concerned, dispute between him and the respondent No.4-Bank is going on and the aforesaid dispute reached upto the Cooperative Tribunal. We are of the opinion that looking to the aforesaid, it cannot be said that "Action Group" has come before this Court with a noble object of bringing to light the financial irregularities by the respondent No.4-Bank. When any institution or any citizen files public interest litigation, it must approach the Court with a genuine public purpose and there should not be an element of personal motive or vengeance, even remotely, while presenting the public interest litigation. If a person approaching this Court by way of public interest litigation itself is having a cloud of personal motive or mala fides, he cannot be allowed to ventilate the alleged grievances under the banner of public cause. One who seeks equity, must come with clean hands. Similarly, one who knocks the doors of the Court under the banner of public interest litigation, should exhibit 100% bona fides and his intention should be such that nobody can raise any doubt about the bona fides of such person. When such bona fide person having complete purity approaches this Court, then, naturally, the Court can also put more weight to the word of such person and certainly consider such litigation at the hands of such person as pure public interest litigation. Nowadays, there is a tendency to achieve the purpose, even in indirect manner, by making a show that it is an honest public interest litigation, but ultimately it has been found that the person who has approached this Court is having his own interest though apparently one would try to make a show that he is not interested in any manner in the outcome of the litigation. In the instant case, it was the duty of the petitioner to point out that there are some proceedings against its Convener as well as against the President of the Petitioner. It was the duty of the petitioner to mention about the pendency of the cases, etc. The petitioner has not come with clean hands and we are of the opinion that this is not a genuine public interest litigation. It is expected from a citizen bringing public interest litigation to state all correct facts and material before the Court. In fact, the duty of the petitioner in the public interest litigation is to bring certain facts before the Court and, thereafter, it is for the Court to consider how to deal with such grievances if they are found to be genuine. If there is any slightest doubt about the bona

fides on the part of such petitioner, then, the court would be hesitant to proceed further with such public interest litigation. Person coming by way of public interest litigation should not have anything to hide from the Court. It was the duty of the petitioner to point out all these materials, of which a reference has been made in the affidavit-in-reply by the respondent No.4-Bank. When a person comes by way of a public interest petition, the status of such person in the society, his credentials, his integrity and the bona fide intention and purpose for bringing such petition is of paramount consideration. If there is some cloud on any of the aforesaid, it would be disastrous to act upon in a public interest litigation at the instance of such person.

13. At this stage, a reference is required to be made to the judgment of the Supreme Court in case of Malik Brothers v. Narendra Dadhich and others, (1999) 6 SCC 552. The Honourable Supreme Court has said that a public interest litigation is usually entertained by a court for the purpose of redressing public injury, enforcing public duty, protecting social rights and vindicating public interest. But, real purpose of entertaining such application is the vindication of rule of law, effective access to justice to the economically weaker class and meaningful realization of fundamental rights. The directions and commands issued by the courts of law in a public interest litigation are for the betterment of the society at large and not for benefiting any individual. But, if the court finds that in the garb of a public interest litigation, actually an individual's interest is sought to be carried out or protected, it would be the bounden duty of the Court not to entertain such petition as otherwise the very purpose of invocation of public interest litigation will be frustrated. PIL is, in fact, a litigation, in which a person is not aggrieved personally, but brings an action on behalf of the downtrodden mass for the redressal of their grievances.

14. In the instant case, the facts of the case do not satisfy our conscience that this is a genuine public interest litigation by the petitioner Action Group. We would not like, therefore, to exercise our discretion by entertaining this petition at the instance of the present petitioner, especially when both the Convener as well as the President of the petitioner Action Group are fighting the litigation against the respondent No.4-Bank and their individual disputes are still pending. However, we hereby make it clear that we are not expressing our opinion one way or the other on merits of the case and we

are not adjudicating the allegation about so-called financial irregularities or mismanagement on the part of the respondent No.4-Bank. If any genuine public interest litigation is filed by a genuine person, the Court may consider the same in detail. The petitioner has, however, pointed out that the Registrar of Cooperative Societies has issued notice under Section 81 of the Cooperative Societies Act and according to the petitioner, that shows that the respondent No.4-Bank is not functioning properly. Since the aforesaid action of notice is sub judice before this Court and since the petitions are pending, we refrain ourselves from expressing any opinion on the aforesaid aspect. However, we feel that the respondent No.4, in order to prove their bona fides, should have tried to remove doubt by satisfying the concerned authority by pointing out that the allegations in the show cause notice are not correct and, accordingly, could have got itself cleared from the charges levelled against it by giving proper explanation. But, as stated earlier, since the issue is sub judice, we are not expressing our opinion about the charges levelled in the show cause notice one way or the other.

15. On behalf of the respondent No.4-Bank, it was submitted that issuance of the notice by this Court in the present petition resulted into great damage to the Bank as some of the depositors tried to take away their deposits back. Since there is no material available on this point, it is not possible for us to pronounce upon the aforesaid grievance of the respondent No.4-Bank. However, it is no doubt true that, in some cases, issuance of notice may have dire consequences on the other side. However, here, respondent No.4-Bank has not placed any sufficient material to satisfy about any such loss caused to them.

16. Before parting, we would like to put a word of caution. In a matter of public interest litigation, the petitioner, who is approaching the Court by way of public interest litigation, must know that ultimately if it is found that petition is filed only to achieve personal motive or object, the Court may come down heavily upon such petitioner and such petitioner can be subjected to even heavy costs. The public interest litigation is required to be entertained and is meant for the persons who are approaching the Court with honesty and with objectivity. It has been found in various cases that sometimes, such public interest litigation is filed only for personal gain or by way of personal malice and genuine public cause many a time is found to be lacking.

17. In view of what is stated above, we are not entertaining this public interest petition at the instance of the petitioner and the same is accordingly dismissed. Since we have not gone into the so-called irregularities alleged by the petitioner against the respondent No.4-Bank, we are not passing any order of costs in favour of the respondent No.4-Bank or other respondents except Reserve Bank of India. We direct the petitioner to pay the costs of Rs.10,000/- so far as the Reserve Bank of India is concerned as costs. Accordingly notice is discharged with costs of Rs.10,000/- so far as the Reserve Bank is concerned and with no order as to costs in so far as the other respondents are concerned.

(B.C. Patel, J.)

(P.B. Majmudar, J.)

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(apj)